

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN A. KRUEGER and RONALD A. PEREZ

Appeal No. 98-2111
Application 08/596,564¹

ON BRIEF

Before CALVERT, FRANKFORT, and PATE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 20 through 30 as amended subsequent to the final rejection in a paper filed August 12, 1997 (Paper No. 7). Claims 20 through 30 are all of the claims remaining in the application, claims 1 through 19 having been canceled.

¹ Application for patent filed February 5, 1996.

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Appellants' invention relates to a food serving tray usable in combination with a separate, conventional cylindrical beverage container and to a food serving arrangement that includes both a tray/food holding section and an elongated cylindrical container for food or beverages usable with the food holding section. Independent claims 20 and 28 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Patterson et al. (Patterson '737)	5,058,737	Oct. 22, 1991
Patterson et al. (Patterson '028)	5,292,028	Mar. 8, 1994

Claims 20 through 30 stand rejected under 35 U.S.C. § 103 as being unpatentable over Patterson '737 in view of Patterson '028. According to the examiner (final rejection, pages 2-3), Patterson '737 discloses all of the claimed features except that the container therein (i.e., glass 24) is not cylindrical as the claims on appeal require. The examiner notes that

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Patterson '028 shows a cylindrical container (24) in the same environment, and concludes that it would have been obvious to one of ordinary skill in the art in view of Patterson '028 to have made the container/glass (24) of Patterson '737 cylindrical.

Rather than reiterate the examiner's full statement of the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellants regarding the rejection, we make reference to the final rejection (Paper No. 6, filed May 16, 1997) and the examiner's answer (Paper No. 12, mailed February 4, 1998) for the examiner's reasoning in support of the rejection, and to appellants' brief (Paper No. 11, filed November 17, 1997) for appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, to the declaration of

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George W. Young, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that we will not sustain the examiner's rejection of claims 20 through 30 on appeal under 35 U.S.C.

§ 103. Our reasons follow.

Independent claims 20 and 28 on appeal each require that the tray/food holding section of the arrangement therein include a hub (16) joined to the food holding section in substantially fixed relationship, with said hub comprising a single cylindrical wall having a cylindrical inner surface (28) disposed to engage an upper portion of the outer surface of the cylindrical container "in snug-fitting relationship," and having said inner surface "extending vertically above said food holding section" when said section is in a specified food holding orientation.

Independent claim 30 is similar to claims 20 and 28, except that it requires only that the hub (16) be provided with a cylindrical inner surface "formed in complementary

relationship to said cylindrically shaped portion of said container" and disposed to engage said cylindrically shaped portion "in snug-fitting relationship," with said inner surface "extending vertically above said food holding section" when said section is in a specified food holding orientation.

After reviewing the teachings of Patterson '737 and Patterson '028, we must agree with appellants that the collective teachings of the applied patents would not have been suggestive to one of ordinary skill in the art at the time of appellants' invention of the tray or food serving arrangement set forth by appellants in the claims before us on appeal. Like appellants (brief, pages 7-9), we fail to find in Patterson '737 any teaching or suggestion of a "snug-fitting relationship" between an inner cylindrical hub surface and an outer cylindrical container surface as required in the claims on appeal. The examiner's position that Figure 2 of Patterson '737 shows a snug fit between the recess (34) and the outer surface of the glass (24) is based entirely on speculation and conjecture, since Patterson '737 is silent concerning any such relationship and, when the disclosure

thereof as a whole is considered, it would appear that the recess (34) and the channel (50) therein are in fact slightly wider than the external diameter of the top end (32) of the glass (24). Note particularly, the showing in Figure 2 that the side walls (52, 54) of the channel (50) merge tangentially into the apparently cylindrical surface of the recess (34) and that column 5, lines 9-12, of Patterson '737 requires the walls (52, 54) to be parallel to one another and spaced apart so as to define a channel that is "slightly wider" than the external diameter of the top end (32) of the glass (24).

With regard to the requirement in the claims on appeal that the inner cylindrical surface of the hub extend "vertically above said food holding section" when said section is in a specified food holding orientation, we can not support the examiner's position that this relationship is shown in Figure 4 of Patterson '737. While it is clear that the top of the central boss (78) seen in Figure 4 extends above the adjacent portions of the food holding section, we are not of the view that Figure 4 of Patterson '737 conclusively shows, or would have been suggestive of, having the apparently

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cylindrical inner surface of the hub/boss (78) extend vertically above the food holding section of the plate (60) therein. Again, we note that Patterson '737 is entirely silent concerning any such relationship and that the showing in Figure 4 is, at best, inconclusive.

In light of the foregoing, we will not sustain the examiner's rejection of independent claims 20, 28 or 30, or any of the claims which depend therefrom, under 35 U.S.C. § 103 based on the combination of Patterson '737 and Patterson '028.

As should be apparent from the foregoing, the decision of the examiner rejecting claims 20 through 30 of the present application under 35 U.S.C. § 103 is reversed.

REVERSED

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Administrative Patent Judge)	
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